

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
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Attorney for WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

IN RE:	§	CASE NO. 08-70381-HDH-13
	§	
CARSON LINKOUS RUSS and	§	
ADELAIDA DISTOR RUSS,	§	
Debtor	§	CHAPTER 13
	§	
WELLS FARGO BANK, N.A.,	§	
SUCCESSOR BY MERGER TO WELLS	§	
FARGO HOME MORTGAGE, INC.	§	
ITS ASSIGNS AND/OR	§	
SUCCESSORS IN INTEREST,	§	
Movant	§	HEARING DATE: 01/20/2010
	§	
v.	§	TIME: 11:00 AM
	§	
CARSON LINKOUS RUSS and	§	
ADELAIDA DISTOR RUSS; WALTER	§	
O'CHESKEY, Trustee	§	
Respondents	§	JUDGE HARLIN D. HALE

**MOTION OF WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11 U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO § 362(e)**

NOTICE - RESPONSE REQUIRED

PURSUANT TO LOCAL BANKRUPTCY RULE 4001 (b), A RESPONSE IS REQUIRED. THE TRUSTEE, IF ONE HAS BEEN APPOINTED, OR THE DEBTOR SHALL FILE A RESPONSE TO ANY MOTION FOR RELIEF FROM THE AUTOMATIC STAY WITHIN FOURTEEN (14) DAYS FROM THE SERVICE OF THE MOTION. THE DEBTOR'S RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

File a written response with the court at:

**CLERK, U.S. BANKRUPTCY COURT
EARLE CABELL U.S. COURTHOUSE, 1100 COMMERCE STREET, Room
1254,
DALLAS, TX 75242-1003**

UNDER BANKRUPTCY RULE 9006 (e) SERVICE BY MAIL IS COMPLETE UPON MAILING; UNDER BANKRUPTCY RULE 9006 (f), THREE (3) DAYS ARE ADDED TO THE PERIOD FOR FILING A RESPONSE WHEN NOTICE OF THE PERIOD IS SERVED BY MAIL.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WELLS FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about September 25, 2008, Debtors (hereinafter "Debtor") filed a petition for an order of relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C.

3. At the time of filing the Chapter 13 petition, Movant held a Texas Home Equity Note executed on November 9, 2006, by CARSON LINKOUS RUSS and ADELAIDA DISTOR RUSS in the original amount of ONE HUNDRED TWENTY-FOUR THOUSAND DOLLARS AND ZERO CENTS (\$124,000.00) with interest thereon at the rate of 7.500% per annum. A true and correct copy of the Texas Home Equity Note is attached hereto as Exhibit "A".

4. The indebtedness is secured by a Texas Home Equity Security Instrument dated November 9, 2006 and executed by CARSON LINKOUS RUSS and ADELAIDA DISTOR RUSS on real estate with all improvements known as:

LOT 23, BLOCK 10, JANLEE HEIGHTS, SECTION ELEVEN (11), AN ADDITION TO THE CITY OF BURKBURNETT, WICHITA COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 22, PAGES 386-387, OF THE PLAT RECORDS OF WICHITA COUNTY, TEXAS.

A true and correct copy of the Texas Home Equity Security Instrument is attached hereto as Exhibit "B".

5. Debtor have failed to maintain current the post-petition payments due under the Texas Home Equity Note and are presently in arrears for 3 payments through and including the December 1, 2009 payment.

6. The outstanding indebtedness to Movant is \$120,628.36 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Texas Home Equity Note and Texas Home Equity Security Instrument.

7. Further cause may exist to terminate the automatic stay if the Debtors fail to provide proof of adequate insurance and payment of applicable taxes by Debtors as required by the Texas Home Equity Note and Texas Home Equity Security Instrument. Movant hereby demands proof of insurance and payment of applicable taxes by Debtors. Movant reserves the right to further assert that Debtors have failed to pay taxes or insurance based on the response of Debtors.

8. In accordance with the terms of the Texas Home Equity Note and Texas Home Equity Security Instrument, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Texas Home Equity Note and Texas Home Equity Security Instrument.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

12. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all post-petition payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that WELLS FARGO BANK, N.A., SUCCESSOR BY

MERGER TO WELLS FARGO HOME MORTGAGE, INC. ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ JEFF FLEMING

12/11/2009

JEFF FLEMING

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ATTORNEY FOR MOVANT

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel.

NOTES: Jeff Fleming left a message for debtor's counsel.

Date of Conference Call: December 07, 2009 11:10 a.m.

BY: /s/ JEFF FLEMING 12/11/2009
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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2009, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ JEFF FLEMING 12/11/2009

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ATTORNEY FOR MOVANT

DEBTORS:

ADELAIDA DISTOR RUSS
931 TEJAS DR.
BURKBURNETT, TX 76354

CARSON LINKOUS RUSS
931 TEJAS DR.
BURKBURNETT, TX 76354

TRUSTEE:

WALTER O'CHESKEY
6308 IOLA AVENUE
LUBBOCK, TX 79424

US TRUSTEE:

1100 COMMERCE STREET, ROOM 976
EARLE CABELL FEDERAL BLDG
DALLAS, TX 75242

DEBTOR'S ATTORNEY:

MONTE J WHITE
1106 BROOK AVENUE
WICHITA FALLS, TX 76301

PARTIES IN INTEREST:

CITY OF WF, WFISD, WICHITA COUNTY
C/O PERDUE BRANDON FIELDER COLLINS & MOT
P.O. BOX 8188
WICHITA FALLAS, TX 76307

PARTIES REQUESTING NOTICE:

HARLEY-DAVIDSON CREDIT CORP.
P.O. BOX 829009
DALLAS, TX 75382-9009